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January 29, 2001

**RECEIVED**

JAN 29 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
The Portals, TW-A325  
445 Twelfth Street, S.W.  
Washington, DC 20554

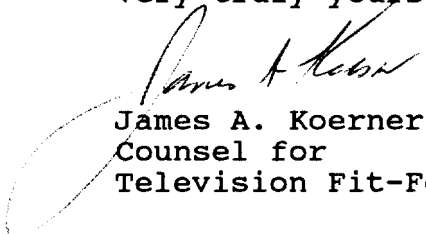
Re: MM Docket No. 00-233  
RM-9996

Dear Ms. Salas:

On behalf of Television Fit-For-Life, Inc., licensee of Television Station WFGX(TV), Fort Walton Beach, Florida, there are transmitted herewith an original and four (4) copies of its Reply Comments in the above-referenced proceeding.

Should additional information be necessary in connection with this matter, please communicate with this office.

Very truly yours,

  
James A. Koerner,  
Counsel for  
Television Fit-For-Life, Inc.

cc: Kathryn R. Schmeltzer, Esq.  
Dr. Al Janney

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

In the Matter of )  
 )  
Amendment of Section 73.622(b) )  
Table of Allotments )  
Digital Television Broadcast Stations )  
(Fort Walton Beach, FL) )

MM Docket No. 00-233  
RM-9996

To: Chief, Video Services Division  
Mass Media Bureau

**REPLY COMMENTS**

Television Fit-For-Life, Inc. ("WFGX"), licensee of Television Station WFGX (TV), Fort Walton Beach, Florida, and the proponent in the above-captioned proceeding, hereby responds to the Opposition of Rainbow 58 Broadcasting, Inc. ("Rainbow") to Petition for Rule Making.

Rainbow is the licensee of WAWD (TV), NTSC Channel 58, Fort Walton Beach, and the permittee of WAWD-DT, Channel 49. Although Rainbow's Opposition allegedly seeks dismissal of the Petition for Rule Making, such a result is not in the cards, since the Commission has already found the proposal is acceptable. Thus, in fact, its Opposition is a Comment in

response to the Notice of Proposed Rule Making, and, as such, urges that the substitution of Channel 50 for Channel 25, as sought by WFGX, not be made.

The thrust of the Rainbow Comments is that the WAWD-DT operation will not receive the interference protection to which it is entitled. In short, the complaint is that the Channel 50 substitution will violate the 2%/10% de minimis interference criteria. An engineering statement attached to the Comments purports to demonstrate that the proposed Channel 50 DTV operation will generate new interference to 6.3% of WAWD-DT's benchmark service.

It is not the WFGX methodology which is flawed, but the Rainbow definition of its benchmark service. Attached hereto is an Engineering Statement of John E. Hilde, P.E., which makes it clear the Rainbow study is built upon a faulty premise.

The FCC's intention, in the various DTV documents, was to assure that, during the transition period, all television stations would be able to replicate, to the fullest extent possible, their existing NTSC service areas. Rainbow's Comments are based upon the assumption that it is entitled to digital interference protection well beyond the replication of the analog WAWD (TV) service area.

The WFGX studies, presented in its Petition for Rule Making and the August 16, 2000 amendment thereto, were conducted exactly in accordance with the FCC calculations in the Sixth Report and Order, the subsequent Memorandum Opinions and Orders, and the Processing Guidelines, all of which are detailed in the attached Engineering Report.<sup>1</sup> On the other hand, the Rainbow study makes an underlying assumption that WAWD, for some reason, is entitled to DTV interference protection having no relationship to its existing NTSC service area.

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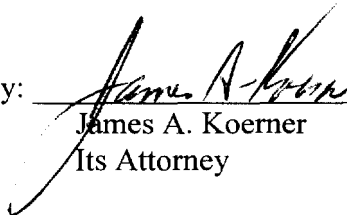
<sup>1</sup> Sixth Report and Order in MM Docket No. 87-268, 12 FC Rcd. 14588 (1997); on recon., Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, 13 FCC Rcd. 7418 (1998); on further recon., Second Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, 14 FCC Rcd. 1348 (1998); Additional Application Processing Guidelines for Digital Television, released August 10, 1998.

Additionally, it should be noted that the WFGX engineering study was, at least preliminarily, accepted by the FCC when it issued the Notice of Proposed Rule Making in this matter. Nothing presented by Rainbow in its Comments disturbs those preliminary findings of compliance with the accepted guidelines.

Accordingly, the channel substitution proposed in the Notice of Proposed Rule Making should be made.

Respectfully submitted,

**TELEVISION FIT-FOR-LIFE, INC.**

By:   
James A. Koerner  
Its Attorney

January 29, 2001

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**STATEMENT OF JOHN E. HIDLE, P.E.  
A COMPONENT OF REPLY COMMENTS  
IN SUPPORT OF THE  
NOTICE OF PROPOSED RULEMAKING  
MM Docket No. 00-233 - RM-9996**

**Petitioner: Television Fit-For-Life, Inc.**

I am a Consulting Engineer, an employee in the firm of Carl T. Jones Corporation with offices located in Springfield, Virginia. My education and experience are a matter of record with the Federal Communications Commission. I am a registered Professional Engineer in the Commonwealth of Virginia, Registration No. 7418, and in the State of New York, Registration No. 63418.

This office has been authorized by Television Fit-For-Life, Inc., (TVFFL) licensee of full-service UHF television station WFGX(TV), Fort Walton Beach, Florida, and petitioner in this matter, to evaluate comments of Rainbow 58 Broadcasting, Inc., (Rainbow) licensee of WAWD(TV) and permittee of WAWD-DT, Fort Walton Beach, Florida, characterized as an Opposition To Petition for Rule Making, and to prepare this statement in response to that opposition.

**GENERAL**

TVFFL previously authorized this office to search for an alternate, more desirable, DTV channel to substitute for its allotted channel 25 and to prepare a technical statement in support of a Petition to Amend the Digital Television (DTV) Table of Allotments to

specify such alternate channel for use by WFGX-DT. Channel 50 was selected because it provides for a superior DTV service to the public. The Commission subsequently released a Notice of Proposed Rule Making<sup>1</sup> on November 24, 2000 proposing to amend the Digital Television Table of Allotments accordingly. TVFFL filed comments in support of the Notice.

### **DISCUSSION**

Rainbow's Comments in Opposition to Petition for Rule Making allege that the methodology employed by TVFFL in conducting the underlying interference studies was flawed. However, upon examination it is clear that in making such claim Rainbow has ignored the fundamental construct of the Digital Television (DTV) Table of Allotments. Rainbow's claim of flawed methodology is incorrect. The methodology employed in the preparation of the subject Petition to Amend the Digital Television (DTV) Table of Allotments is exactly that which is employed by the Commission in its determination of compliance with §73.623(c).

### **DTV METHODOLOGY**

The development of the DTV Table of Allotments, the policy of service replication as the fundamental construct and the methodology and computer software required to

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<sup>1</sup>NOTICE OF PROPOSED RULE MAKING, MM Docket No. 00-233, RM-9996, Adopted: November 22, 2000, Released: November 24, 2000

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TELEVISION-FIT-FOR-LIFE, INC.  
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accomplish the service replication allotment approach are set forth in the Sixth Report and Order<sup>2</sup> in MM Docket No. 87-268. The service replication allotment approach is further detailed in Appendix B of the Sixth Report and Order. Each eligible television (NTSC) broadcaster was allotted a DTV channel based on the principle of service area replication. As explained in Appendix B, each of these allotments was determined based on the authorized NTSC facility of the subject station.

As Appendix B states in part, "The tabulated value of effective radiated power (ERP) for DTV operation was calculated to replicate NTSC coverage. It is the maximum, over a set of uniformly spaced compass directions, of the ERP values required to extend noise-limited DTV coverage as far as the grade B contour of the NTSC station." The methodology created to accomplish the principle of service replication is further detailed in Appendix B, where in the last paragraph a measure of success is described. "The column "DTV/NTSC AREA MATCH" shows the degree to which the allotment table has succeeded in providing each NTSC station with a DTV channel for replication of service during the transition. The area which will receive DTV service is divided by the area now served by the NTSC channel, and the result is presented as a percentage. This percentage is never larger than 100% because DTV service areas not presently receiving NTSC service are not considered in this view of the consequences of the table."

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<sup>2</sup> In the Matter of Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service. SIXTH REPORT AND ORDER Adopted: April 3, 1997, Released: April 21, 1997

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In the Digital Television (DTV) Table of Allotments contained in Appendix B, the column "Digital Television Service During Transition" shows the number of people located within the grade B service area contour who are predicted to receive interference free DTV service. This is the "DTVSERVICE" baseline population which in most cases is the same or slightly larger than the NTSC baseline population listed under the column "Current Service". It is this "DTVSERVICE" baseline population which is intended to be protected by the limitation of the 2% and 10% *de minimis* interference policy which is contained as new §73.623(c) in Appendix E of the Order on Reconsideration of the Sixth Report and Order.<sup>3</sup>

Further, the "Final" DTV Table of Allotments is presented as Appendix B of the Second Order on Reconsideration.<sup>4</sup> This final Table must be employed in all instances of interference analysis to determine compliance with the requirements of §73.623(c) regarding the 2% and/or 10% *de minimis* interference criteria. It is clarified yet again in the Additional Guidelines.<sup>5</sup> It is clearly noted that it is this DTVSERVICE baseline population which is protected from additional interference in excess of the *de minimis* 2% reduction of this baseline population caused by any individual proposal or change, or the

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<sup>3</sup> In the Matter of Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service. MEMORANDUM OPINION AND ORDER ON RECONSIDERATION OF THE SIXTH REPORT AND ORDER Adopted: February 17, 1998, Released: February 23, 1998.

<sup>4</sup> In the Matter of Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service. SECOND MEMORANDUM OPINION AND ORDER ON RECONSIDERATION OF THE FIFTH AND SIXTH REPORT AND ORDERS Adopted: November 24, 1998, Released: December 18, 1998.

<sup>5</sup> Public Notice, ADDITIONAL APPLICATION PROCESSING GUIDELINES FOR DIGITAL TELEVISION (DTV) Released: August 10, 1998



*de minimis* 10% reduction of this baseline population caused by all accumulated changes. Accordingly the baseline population contained in the DTVSERVICE column of Appendix B of the Second Order for any subject station may not be reduced by a single proposal to less than 98% of that population figure. In some instances the baseline population shown in the NTSCSERVICE column exceeds the baseline population shown in the DTVSERVICE column. In these instances the NTSCSERVICE baseline population is protected from reductions in excess of the respective *de minimis* percentages. The resultant DTVSERVICE population may not be reduced to less than 90% of the NTSCSERVICE baseline population.

#### **TABLE'S CHARACTERISTICS**

When the DTV Table of Allotments was created using the described methodology two additional policies were applied. When creating an allotment to replicate the NTSC service area of a station, if the resultant DTV ERP exceeded 1000 kW then the allotment was assigned a maximum DTV ERP of 1000 kW. The NTSC grade B contour, and the baseline population predicted to receive interference free DTV service within it becomes the baseline population in the DTVSERVICE column of the DTV Table of Allotments.

If, alternately, when creating a replicated allotment, the resultant DTV ERP is less than 50 kW the minimum ERP for that allotment is set to 50 kW. The resulting baseline population in the DTVSERVICE column of the DTV Table of Allotments is the total of those

persons who are located within the NTSC grade B contour and are predicted to receive interference free DTV service.

It is important to restate in part from the Sixth Report and Order that: "... DTV service areas not presently receiving NTSC service are not considered ..." It is abundantly clear throughout these proceedings that DTV service is protected **only** when it occurs **within** the established grade B contours of the authorized NTSC television broadcast facility.

#### **SPECIFIC ISSUES**

Rainbow's claim that TVFFL employed flawed methodology is wrong. TVFFL employed the FCC's own software, obtained by this office directly from FCC Staff. The interference studies, to confirm the results of the channel search, and to determine that channel 50 can be allotted to Fort Walton Beach, Florida in full compliance with the 2% and 10% *de minimis* interference requirements, were performed by running the Commission's own software on the same models of Sun Microsystems Sparc 5 and Ultra Sparc workstations used by the Commission to evaluate applications and proposals. In the case of channel 49 in Fort Walton Beach, Florida, the TVFFL baseline study results entirely match the baseline figures contained in Appendix B, while the studies predicted no reduction in the DTVSERVICE baseline population for channel 49 as a result of the proposed allotment of channel 50 to WFGX as its paired DTV channel.

Since, at the time the DTV Table in Appendix B of the Second Order was created, the WAWD(TV) authorized NTSC facility was insufficient to generate a replication DTV allotment with the minimum 50 kW ERP, according to the policy mentioned above, the channel 49 allotment for WAWD-DT was increased to the minimum DTV ERP of 50 kW. Rainbow has performed interference studies which purport to include additional population predicted to receive DTV service as a result of that channel 49 allotment modification. Rainbow readily admits that its claimed extra population resides outside the grade B service area of WAWD(TV) and, therefore, outside the replicated service area. Rainbow's claim is entirely based on predicted potential interference to predicted DTV service populations located wholly outside the WAWD(TV) replicated service area as defined in Appendix B. It is clear that such tortured misuse of the DTV methodology is outside the bounds of existing allotment policy.

## **CONCLUSIONS**

It is clear that Rainbow has ignored the Commission's settled allotment policy as it applies to the ongoing Digital Television transition. The Commission's policy has been and continues to be, to the extent possible, the replication of the authorized NTSC television grade B service area by the paired DTV allotment created for the use of each eligible authorized NTSC facility to provide DTV service to the population residing within

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that protected area. As stated in the Notice<sup>6</sup>, TVFFL's proposed channel change is acceptable under the 2 percent criterion for de minimis impact that is applied in evaluating requests for modification of initial DTV allotments under §73.623(c)(2).

This statement and the evaluations and studies in its support were prepared by me and are believed to be true and correct to the best of my knowledge and belief.

Dated: January 24, 2001

  
John E. Hidle, P.E.



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<sup>6</sup> NOTICE OF PROPOSED RULE MAKING, MM Docket No. 00-233, RM-9996, Adopted: November 22, 2000, Released: November 24, 2000

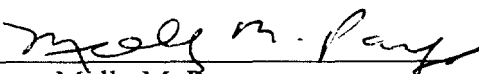
## **CERTIFICATE OF SERVICE**

I, Molly M. Parezo, a secretary in the law offices of Koerner & Olender, P.C., do hereby certify that a copy of the foregoing **"Reply Comments"** was served this 29<sup>th</sup> day of January, 2001, via first class mail, postage prepaid upon the following:

Henry A. Solomon, Esq.  
Garvey, Schubert & Barer  
Fifth Floor  
1000 Potomac Street, N.W.  
Washington, D.C. 20007

\* Ms. Nazifa Nazim  
Mass Media Bureau, Room 2-A726  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

\* Hand Delivered

  
Molly M. Parezo